

Illinois Program Work Plan
Agreement Between
Illinois EPA and Region 5, U.S. EPA

NPDES Compliance Monitoring and Enforcement for CAFOs

Objective 1: To detect, report, and sufficiently document all violations in order to support enforcement of the federal regulations. This objective addresses U.S. EPA's CAFO program review findings related to developing and maintaining a comprehensive inventory of CAFOs and evaluating their regulatory status, revising the inspection processes to determine and track CAFOs requiring NPDES permits, and developing and implementing SOPs for responding to CAFO-related citizen complaints¹.

Approach:

1. Illinois EPA will implement a short-term strategy for evaluating facilities that are likely to be Large CAFOs. The strategy includes the following:

- a. Illinois EPA will provide the NPDES inspection list identifying 25 facilities including location data to U.S. EPA, no later than February 28, 2013.
- b. By February 28, 2013, Illinois EPA will provide a final inventory to U.S. EPA of all large CAFOs and any other permitted CAFOs as a basis for the final Workload Assessment. By September 30, 2013, Illinois EPA will provide an updated CAFO inventory that contains the information identified in its plan to create and maintain a comprehensive inventory of CAFOs. Illinois EPA will enter and maintain the inventory in the Integrated Compliance Information System (ICIS). Illinois EPA will seek commitments whereby the Illinois Department of Agriculture and Illinois Department of Public Health will routinely provide information about potential Large CAFOs to Illinois EPA. Illinois EPA will get regular updates about potential Large CAFOs from Illinois Department of Agriculture and Illinois Department of Public Health. The inventory will include all large and permitted CAFO sites identified by Illinois EPA regional offices, permit applications, citizen tips and complaints, U.S. EPA, the Illinois Department of Agriculture, the Illinois Department of Public Health, and the Illinois Emergency Management Agency. The inventory may make use of a Geographic Information System-based pilot inventory currently being developed for seven high profile counties.

¹ See the *Initial Results*, Section VI. 2, pages 36-38.

c. Following U.S. EPA's 2012 oversight inspections, Illinois EPA will address U.S. EPA's comments and revise its CAFO NPDES inspection/evaluation standard operating procedure as necessary and will provide the updated SOP to U.S. EPA for review and approval or approval with modification by February 28, 2013.

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e. Illinois EPA will perform 25 NPDES evaluations by June 1, 2013, to determine whether the facilities discharge, with at least 12 completed during or after precipitation events.

f. At its existing Compliance Group monthly meetings, Illinois EPA will review the findings and documentation of all NPDES evaluations for: a determination as to whether the facility meets the definition of a CAFO, areas of non-compliance, wet weather SNC determinations, violations detected, documentary evidence, and recommendations for correcting the violations. Illinois EPA and U.S. EPA will confer quarterly to review the findings and documentation of all CAFO noncompliance cases beginning with those initiated in 2009.

2. By February 28, 2013, Illinois EPA will confirm that CAFO inspectors and their first-line supervisors have completed Illinois EPA's training curriculum. Newly hired Illinois EPA CAFO inspectors will be trained within 6 months of starting and before independently leading a CAFO inspection.

3. By February 28, 2013, Illinois EPA will address U.S. EPA's comments and revise its citizen complaint SOP as necessary and will provide the SOP to U.S. EPA for review and approval or approval with modification. The SOP is to provide for a written report on investigation results to the complainant. The database is to include a field recording the response to the complaint. The SOP will also provide instruction for ensuring 24-hour spill/release response capability which includes on-site presence of an NPDES trained inspector, sampling capability, and equipment to ensure that spills/releases from facilities are documented and assessed to determine if the facilities are CAFOs and require NPDES permits. The SOP will describe laboratory capabilities and services necessary to complete data analysis within prescribed holding times for pollutants of concern. The SOP must specifically address maintenance of those capabilities for those events which occur at night, on weekends, and on holidays.

4. Illinois EPA will develop an annual site-specific CAFO inspection plan which ensures NPDES inspection at a minimum of 20 percent of all permitted CAFOs, consistent with U.S. EPA's National NPDES Compliance Monitoring Strategy. Illinois EPA will provide the plan to U.S. EPA by September 30 of each year.

5. During federal fiscal year 2013, U.S. EPA will conduct oversight inspections of a minimum of three Illinois EPA NPDES CAFO inspections to evaluate the effectiveness of the Illinois EPA

inspection program. U.S. EPA inspectors will document their findings, and evaluate the thoroughness and scope of prior Illinois EPA inspections as well as the appropriateness of the record-keeping and reporting associated with the inspections. U.S. EPA will provide copies of these inspection reports to Illinois EPA within 60 days of completion. U.S. EPA will also conduct independent inspections at additional CAFOs with suspected wet weather discharges. U.S. EPA will invite Illinois EPA participation. U.S. EPA will initiate any appropriate follow-up enforcement consistent with existing State/U.S. EPA enforcement communication agreements and the Environmental Performance Partnership Agreement

Indicia of Progress: Illinois EPA creates and maintains in ICIS a consolidated inventory of Large CAFOs and other permitted CAFOs. The inventory is easily accessible to all Illinois EPA staff and the public. Illinois EPA conducts NPDES evaluations at 25 potential Large CAFOs by June 1, 2013, consistent with approved SOPs. Illinois EPA implements approved annual inspection plans for permitted CAFOs consistent with the National Compliance Monitoring Strategy. Illinois EPA implements a satisfactory training program for inspectors. Illinois EPA responds to all citizen complaints and emergency CAFO-related discharges in a timely manner. Illinois EPA identifies and records 100 percent of Single Event Violations and all wet weather Significant Non-Compliance (SNC) in ICIS.

Objective 2: To properly track and efficiently resolve newly-identified violations. This objective focuses on newly-identified violators and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs and the requirement that all CAFOs that discharge or propose to discharge must apply for an NPDES permit.²

Approach:

1. Illinois EPA's Bureau of Water will revise its Enforcement Response Guide (ERG) in a manner designed to assure timely and appropriate response to violations detected at CAFOs and ensure a prompt return to compliance³. Illinois EPA will submit the revised ERG to U.S. EPA by February 28, 2013. The ERG will require all Large CAFOs to apply for and obtain an NPDES permit where the CAFOs discharge or propose to discharge. The ERG will require all Medium livestock and poultry facilities to apply for and obtain a permit where the facility meets the definition of a CAFO. In addition, the ERG will reflect the wet weather SNC policy in the determination of SNC as well as the appropriate enforcement response. Illinois EPA will submit the ERG to U.S. EPA for review and approval or approval with modifications. Illinois EPA will

² See the *Initial Results*, Section VI. 3, pages 38-39.

³ The ERG should include systems and procedures which assure timely and appropriate response to violations detected at other sources as well.

fully adopt and implement the ERG within 30 days of U.S. EPA approval or approval with modifications.

2. Illinois EPA will issue violation notices (VNs) for all significant noncompliance detected at CAFOs, within 180 days of Illinois EPA becoming aware of the alleged violation, pursuant to Section 31(a) of the Illinois Environmental Protection Act (Act). The VN will contain a recommended remedy and schedule for implementation as appropriate. Compliance Commitment Agreements (CCAs) will be accepted when they bind the respondent to the requirements and timeframes recommended in the VNs. If Illinois EPA is unable to negotiate an acceptable CCA within 120 days of issuing the VN, Illinois EPA will refer the matter to the Illinois Attorney General's office. For conditions that constitute an imminent or substantial endangerment to human health, the environment or property, Illinois EPA will immediately refer the matter to the Illinois Attorney General's office pursuant to Section 43 of the Act.

3. In cases where the facility does not respond to the VN or proposes a remedy that is less effective than the remedy proposed by Illinois EPA, Illinois EPA will immediately complete the necessary actions under Section 31 to allow Illinois EPA to formally refer the matter to the Illinois Attorney General's office or the State's Attorney of the county in which the alleged violation occurred. Simultaneously, Illinois EPA will refer the case to its existing Enforcement Decision Group for pre-referral consideration of the case.

Indicia of Progress: Illinois EPA consistently follows the approved ERG. All CCAs are finalized within 120 days of the VN. No State-lead enforcement cases result in U.S. EPA taking additional action to resolve the same violations.

Objective 3: To assure that unresolved enforcement matters are properly tracked and efficiently resolved. This objective focuses on existing matters and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs⁴.

Approach:

1. Illinois EPA program and legal managers, Illinois Attorney General's Environmental Division managers, and U.S. EPA program and legal managers will continue to conduct a quarterly docket review of all referred CAFO matters and all open federal enforcement cases. Participants will agree on the lead agency, path to resolution (including target dates), appropriate penalty resolution, and desired results. Illinois EPA will document decisions.

⁴ See the *Initial Results*, Section VI. 3, pages 38-39.

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3. Illinois EPA will provide a report by no later than the 15th of every odd numbered month to the U.S. EPA Water Enforcement Branch Chief. The report will reflect the activities completed during the preceding two months. The reports will include the following:

- a list and electronic copy of the report for each facility evaluated under Objective 1, approach 1(e), to determine whether the facility is subject to NPDES permitting requirements;
- results of the Compliance Group's determinations under Objective 1, approach 1(f);
- a list of all potential CAFO-related citizen complaints/spills/releases received in the preceding month under Objective 1, approach 3, and the disposition of the cases;
- a list of potential CAFO facilities evaluated by the Enforcement Decision Group and a description of actions taken with regard to those facilities, including copies of any referrals to the Illinois Attorney General's office or written compliance determinations; and
- a list of all potential CAFO NPDES enforcement matters referred to the Illinois Attorney General's office or that are before the Illinois Pollution Control Board and a written summary of the status of the cases.

The frequency of reports may be adjusted after the initial six months by mutual agreement by Illinois EPA and U.S. EPA.

Indicia of Progress: All pending matters meet agreed-upon schedules for action and resolution. Decisions affecting case progress are made expeditiously, and barriers are removed. Newly-referred matters placed on the docket progress appropriately. Monthly reports are submitted timely and contain all required information.